

**REMARKS**

This Application has been carefully reviewed in light of the final Office Action mailed August 19, 2005 (the "Office Action"). At the time of the Office Action, Claims 1-21 were pending. In the Office Action, the Examiner rejects Claims 1-21. Applicant amends Claims 4, 12, 20 and 21. Applicants respectfully request reconsideration and favorable action in this case.

**Section 102 Rejections**

The Office Action rejects Claims 1-4, 8, 12, 16 and 20 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,910,984 issued to Low ("*Low*"). Applicants respectfully traverse these rejections for the reasons stated below.

In response to Applicants' previous remarks in their previous response dated May 26, 2005, the Office Action states that "*Low* teaches that the SPAs discussed may be the SCP and Adjunct, but may also be the SLEE/SLP (Fig. 1, #15 in view of col. 10, lines 40-50)." Office Action, page 2, ¶ 2. The Office Action also states that "SPAs #12 and #13 serve as monitors and backups for SSP devices (Fig. 1, #10) and CS processing devices (Fig. 4) wherein the data being backed up on SPA #12 includes information from remote components (col. 10, line 58 – col. 11, #20). Because of *Low*'s monitoring hierarchy, the system is one of *Low* performing backup services for remote devices, and the rejection stands." *Id.* Thus, the Office Action contends that SPA 12 of *Low* remotely backs up information from CS processing devices and "remote components."

However, in actuality *Low* discloses a reliable backup store 55 that saves information for use by second service logic 52 upon failure of first service logic 50, both of which are a part of SPA 12. *See, e.g., Low*, col. 10, line 58 – col. 11, line 20. Reliable backup store 55 saves data for processing CS service requests. *See id.* However, there is no disclosure in *Low* for the remote backup of information that has been locally stored in a network element. *Low* does not disclose that the same information stored in reliable back store 55 is also stored at a remote network element, whether a call segment processing device, SPA 12 or otherwise. In addition, while the Office Action also mentions the SLEE/SLP, Applicants note that an

SPA in *Low* provides SLEE functionality; but there is no disclosure of remote backup of information stored at a network element in connection with providing this functionality.

Therefore, for at least these reasons, Applicants respectfully submit that *Low* does not disclose each element of Claim 1 and request that the rejection of Claim 1 be withdrawn.

Claim 4 recites storing respective local data at a database of the network element manager remotely from the network elements. Claims 12 and 20 recite similar elements. As discussed above, the cited art used in the rejections does not disclose, teach or suggest storing local data at a network element manager database remotely from the network elements. Therefore, for at least these reasons, Applicants respectfully submit that Claims 4, 12 and 20 are patentable over the cited art used in the rejections and request that the rejections of these claims be withdrawn.

Claims 2-3 depend from Claim 1 and Claim 8 depends from Claim 4. Applicants respectfully submit that Claims 2-3 and 8 are patentable over the cited art used in the rejections for at least the same reasons as discussed above with respect to Claims 1 and 4.

### **Section 103 Rejections**

The Examiner rejects Claims 5, 9, 13 and 17 under 35 U.S.C. 103(a) as being unpatentable over *Low* as applied to claims 4 and 12 and further in view of U.S. Patent 5,768,353 to Browne ("*Browne*"). The Examiner rejects Claims 6, 10, 14, 18, and 21 under 35 U.S.C. 103(a) as being unpatentable over *Low* as applied to claims 4 and 12 and further in view of U.S. Patent 5,862,325 to Reed, et al. ("*Reed*"). The Examiner rejects Claims 7, 11, 15, and 19 under 35 U.S.C. 103(a) as being unpatentable over *Low* as applied to claims 4 and 12 and further in view of *Browne* and *Reed*. Applicants respectfully traverse these rejections.

Claims 5-7 and 9-11 each depends, either directly or indirectly, from Claim 4 and Claims 13-15 and 17-19 each depends, either directly or indirectly, from Claim 12. Therefore, Applicants respectfully contend that each of Claims 5-7, 9-11, 13-15 and 17-19

are each patentably distinguishable from the cited art used in the rejections, for example, for the same reasons discussed above with regard to their respective base claims.

In addition, the Office Action still fails to cite the specific teaching in the prior art that would motivate one skilled in the art to combine *Low* and *Brown*. In response to Applicants' arguments related to the motivation to combine *Low* and *Brown* as suggested by the Office Action, the Office Action states that *Low* "is silent regarding specific protocols and network types within the generic telecomm network" and that because of this "one of ordinary skill in the art would have been motivated to go out and learn network protocols to be used in a telecommunications network." Office Action, page 3, ¶ 5. The Office Action also states that *Brown* discloses "methods of transferring data from various network entities within a Low-style telecommunications network, and the necessary protocols therewith to transfer data and to handle telecommunications databases." *Id.* The Office Action then notes the OSI networks and RAM/FTAM systems of *Brown* and states that "one of ordinary skill in the art would have had to use this protocol or else throw out this legacy equipment" and "would have used Brown in order to perform Low while using legacy equipment, which would therefore cut down on costs."

The Office Action fails to cite any portion in the cited art to support the conclusory combination statements that "one of ordinary skill in the art would have had to use this protocol or else throw out this legacy equipment" and "would have used Brown in order to perform Low while using legacy equipment, which would therefore cut down on costs." The Office Action cites two portion of *Brown* as providing the motivation to combine. The Office Action cites to column 9, lines 34-55 which merely states that the data analyzer of *Brown* utilizes a number of particular technologies. *See* Office Action, page 7, ¶ 18 and *Brown*, col. 9, lines 34-55. The Office Action also cites to column 1, lines 50-55 of *Brown* which merely states that it is important that data be processed and collected in connection with communication instances arising outside an operator's network but terminating in or crossing the operator's network. *See* Office Action, page 3, ¶ 6 and *Brown*, col. 1, lines 50-55. Neither of these portions of the cited art supports the conclusory Office Action statements for providing the motivation to combine the references. The Office Action provides no support

either in *Low* or *Brown* for the contention that one skilled in the art would have had to use certain protocols or else throw out legacy equipment.

The M.P.E.P. sets forth a strict legal standard for finding obviousness based on a modification of a reference. According to the M.P.E.P., "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge [that was] generally available to one of ordinary skill in the art" at the time of the invention. M.P.E.P. § 2143.01. The fact that references can be combined or modified does not render the resultant combination [or modification] obvious unless the prior art also suggests the desirability of the combination or modification. *See id.*

The governing Federal Circuit case law makes this strict legal standard even more clear.<sup>1</sup> According to the Federal Circuit, "a showing of a suggestion, teaching, or motivation to combine or modify prior art references is an essential component of an obviousness holding." *In re Sang-Su Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002) (quoting *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 U.S.P.Q.2d 1456, 1459 (Fed. Cir. 2000)). "Evidence of a suggestion, teaching, or motivation . . . may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, the nature of the problem to be solved." *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). However, the "range of sources available . . . does not diminish the requirement for actual evidence." *Id.* Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." *In re Mills*, 916 F.2d at 682, 16 U.S.P.Q.2d at 1432. *See also In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998) (holding a *prima facie* case of obviousness not made where the combination of the references taught every element of the claimed invention but did not provide a motivation to combine); *In Re Jones*, 958 F.2d 347, 351, 21 U.S.P.Q.2d 1941, 1944 (Fed. Cir. 1992) ("Conspicuously missing from this record is any evidence, other

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<sup>1</sup> Note M.P.E.P. 2145 X.C. ("The Federal Circuit has produced a number of decisions overturning obviousness rejections due to a lack of suggestion in the prior art of the desirability of combining references.").

than the PTO's speculation (if that can be called evidence) that one of ordinary skill in the herbicidal art would have been motivated to make the modification of the prior art salts necessary to arrive at" the claimed invention.). Even a determination that it would have been obvious to one of ordinary skill in the art at the time of the invention to try the proposed modification or combination is not sufficient to establish a *prima facie* case of obviousness. *See In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1599 (Fed. Cir. 1988).

The Office Action provides no support for the contention that *Brown* discloses a method of transferring data from network entities within a *Low*-style telecommunications network. *Brown* discloses an inter-network call accounting system that allows call records to be sorted according to the network operator that should be charge. The system comprises a district data collector, a streamer system, a company system and a client system between two PSTNs. *See Brown*, col. 5, line 25 – col. 6, line 46 and Figure 1. *Low* discloses a fault tolerant telecommunications architecture with a switching system for effecting call setup, call maintenance and call clearance. There is no disclosure that *Brown*'s method is used "in a *Low*-style telecommunication network." The only similarity between the two references is that they may both be used in a telecommunications environment.

Even if the Office Action's proposed modifications were even possible, the rejections would still be improper because as discussed above the Examiner has not shown the required teaching in the prior art to combine *Low* and *Brown*. There is no citation to the specific teaching in the prior art that would motivate the combination, as required by the M.P.E.P. and governing Federal Circuit caselaw.

Thus, Applicants respectfully submit that the Examiner's conclusory assertion that it would have been obvious to combine the teachings of *Low* and *Brown* to arrive at Applicants' invention is entirely insufficient to support a *prima facie* case of obviousness under 35 U.S.C. § 103(a) under the M.P.E.P. and the governing Federal Circuit case law. For at least these additional reasons, Applicants respectfully submit that Claims 5, 7, 9, 11, 13, 15, 17 and 19 are patentable over the cited art used in the rejections and request that the rejections of these claims be withdrawn.

Moreover, the Office Action still fails to cite the specific teaching in the prior art that would motivate one skilled in the art to combine *Low* and *Reed*. In rejecting Claims 6 and 10, the Office Action states that *Low* does not disclose the elements of Claims 6 and 10. *See* Office Action, page 7, ¶ 20. The Office Action then states that *Reed* "teaches a method (abstract) of handling databases in the voice/data environment (col. 1, line 1 – col. 10, line 10) for which backup processes have been used using the above method (col. 93, lines 15-30; col. 114, lines 10-35)." *Id.* However, these portions of *Reed* cited by the Office Action merely disclose storing backup copies of a provider database or consumer database and general discussion regarding an FTP partner server and server object. The Office does not cite to any portion of *Reed* as disclosing, for example each element of Claim 6, an IP gateway network element having an active memory and a random access memory, copying configuring files to the random access memory from the active memory and copying contents of the random access memory to the network element manager using FTP protocol. The mere fact that reference mentions backing up data and IP and FTP protocols does not provide the necessary disclosure for the above-referenced claim elements. The Office Action cites no disclosure of any art for these elements.

In addition, the Office Action states, in discussing the IP and FTP disclosure of *Reed*, that "the addition of such systems includes the desirability factor of improving naming methods for communications entities (col. 81, lines 35-60) that make it easier for entities to identify each other during monitoring processes (col. 81, lines 40-45)." Office Action, page 4, ¶ 7. The Office Action further states that one of ordinary skill "would have used *Reed* to learn protocol systems that would improve *Low*'s efficiency in monitoring, particular since *Low* requires identifying the status of connections." *Id.* The portions of *Reed* cited in the Office Action to support the combination with *Low* disclose advantages of a communications object system for deploying a global name resolution service. This disclosure has nothing to do with *Low*'s fault tolerant telecommunications architecture with a switching system for effecting call setup, call maintenance and call clearance. The Office Action fails to cite any portion in the cited art to support the conclusory combination statement regarding using *Reed* to learn protocol systems or *Low*'s efficiency in monitoring. Again, no portion of the cited art

provides the specific motivation required by the M.P.E.P. and the Federal Circuit to support a combination of *Low* and *Reed*.

For at least these additional reasons, Applicants respectfully submit that Claims 6, 7, 10, 11, 14, 15, 18 and 19 are patentable over the cited art used in the rejections and request that the rejections of these claims be withdrawn.

Claim 21 recites storing the respective local data at a database of the telephony network element manager remotely from the network elements. As discussed above, the cited art used in the rejections does not disclose, teach or suggest storing local data at a network element manager database remotely from the network elements. Therefore, for at least these reasons, Applicants respectfully submit that Claim 21 is patentable over the cited art used in the rejections and request that the rejection of Claim 21 be withdrawn.

**CONCLUSION**

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad C. Walters, Attorney for Applicants, at the Examiner's convenience at (214) 953-6511.

Although no fees are believed due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Date: October 19, 2005

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